

# EXHIBIT D

**In The Matter Of:**

*THE CITY OF NEW YORK, ET AL v.  
EXXON MOBIL CORPORATION, ET AL*

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*VOLUME 36  
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*ORDER TO SHOW CAUSE*

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[1] looked at a lot of things.

[2] Q. Sir, did you look at it different than air quality impact?

[3] MR. BONGIORNO: Your Honor, may he just be allowed to  
[4] finish his answer? With any type of pauses, there is a new  
[5] question.

[6] THE COURT: I haven't noticed any rudeness on the part  
[7] of counsel.

[8] MR. BONGIORNO: I didn't mean to imply that, not at  
[9] all.

[10] THE COURT: Maybe from time to time there has been  
[11] some talking over, but it has been inadvertent and rare.

[12] MR. BONGIORNO: Absolutely.

[13] THE COURT: Anyway, were you not done?

[14] THE WITNESS: I have forgotten at this point, but I  
[15] think I can answer the question he just asked.

[16] THE COURT: OK.

[17] A. If you asked were we looking at using any oxygenate in  
[18] gasoline to achieve any air quality objectives other than those  
[19] that were driving the oxygenate gasoline program, then the  
[20] answer is no. We were trying to comply with the oxygenated  
[21] gasoline program. And the environmental effects of that were  
[22] what they were, because that program was specified.

[23] Q. Fair enough. Thanks for the clarification.

[24] In making the choice between ethanol and MTBE, the  
[25] same applies; that is, you looked only at complying with the

[11] requirements nor the decisions with the 1995 requirements did  
[12] you consider groundwater costs, did you?

[13] A. Those requirements weren't looking at groundwater costs.  
[14] The --

[15] Q. And those were the only requirements you looked at?

[16] A. No. Because the handling of the gasoline was being looked  
[17] at by our Supply and Marketing Department. I didn't look at  
[18] anything necessarily associated with groundwater. From my  
[19] perspective, MTBE was already in use, you know, in all the  
[20] areas that we were planning on using it for the Clean Air Act  
[21] requirement. So there wasn't a substantive change in gasoline  
[22] in those areas.

[23] Q. Would you take a look at Tab 2, please, in the binder I  
[24] gave you. This is PL477. It is in evidence. It is titled --  
[25] Liz, if you could bring it up, please -- "Oxygenate Strategy  
Review," dated May 19, 1995.

[11] And we had used this before. The jury has seen it so  
[12] I just want to touch on it briefly.

[13] If you go to the second page, you see that in 1994,  
[14] Exxon was using -- had used 79,000 barrels per day of ethanol.

[15] Am I understanding that chart correctly?

[16] A. No. That has to be an industry number.

[17] Q. That is too much for --

[18] A. That is all the ethanol that was being made, as far as I  
[19] know, and certainly that's true for the MTBE.

[1] regulatory requirements and not at health effects or  
[2] environmental effects other than those, correct?

[3] A. We weren't looking at the difference in environmental  
[4] effects you would get, for instance, if you burned gasoline  
[5] with ethanol versus gasoline with MTBE, and there are some  
[6] differences. But we weren't looking at those two differences,  
[7] no. We were looking at adding the mandated amount of  
[8] oxygenate.

[9] Q. And is the same true for the decision with respect to using  
[10] an oxygenate to comply with the RFG requirements, that is, you  
[11] looked solely to comply with the blending requirements imposed  
[12] by law?

[13] A. No. There is actually a fine distinction there that makes  
[14] the answer different for RFG, because in RFG you actually had  
[15] to comply with calculated emissions requirements, and the  
[16] oxygenate you used affected the calculated emissions  
[17] requirements. So if you chose one oxygenate versus another,  
[18] you might have to make a different reformulation to the  
[19] gasoline.

[20] Q. Yes. You might have to formulate the gasoline differently,  
[21] but your goal was simply to comply with what the regulations  
[22] required for emissions, correct?

[23] A. Well, yes. We had to comply with the requirement to sell  
[24] gasoline.

[25] Q. And neither the decision with respect to the 1992

[11] Q. So the MTBE figures and the ethanol figures are  
[12] industry-wide?

[13] A. That would appear to be the case.

[14] Q. OK.

[15] A. I don't see any identification of whose document this is.

[16] Q. Let's go back to the first page.

[17] A. It has a date on it.

[18] Q. Yes. And it is stamped "Exxon proprietary," do you see  
[19] that?

[20] A. Yes. Certainly this is an Exxon document. I was referring  
[21] to who from an organizational perspective. I don't immediately  
[22] recognize this as a document that I prepared. But ...

[23] Q. If you go to the page with the Bates number ending in 231,  
[24] headed "Groundwater Issues With Oxygenates."

[25] Are you there with me?

[16] A. Yes, I see that.

[17] Q. It states: "U.S. Geological Service recently released  
[18] report identifying MTBE as the second most common groundwater  
[19] contaminant in their recent study."

[20] Do you see that?

[21] A. Yes, I see that.

[22] Q. Were you aware that by 1995 Exxon had knowledge that MTBE  
[23] was being reported by the USGS as the second most common  
[24] groundwater contaminant?

[25] A. I don't recall specifically knowing that at the time.

- [1] Q. No, sir --  
[2] A. That doesn't mean I didn't at the time but ...  
[3] Q. You don't quarrel with this document reflecting that, do you?  
[4] A. I can't -- I can't either affirm it or dispute it. It looks like an Exxon document, but from my own knowledge I can't tell you whether that was true or not.  
[5] Q. Let's go forward to Tab 3, please. This is PL3074. And it is in evidence as well. And it is a document entitled, "EUSA Marketing Environmental Engineering MTBE Survey - Retail Stores." And it is in evidence.  
[6] Do you recall this document?  
[7] A. Not sitting here today, although I see that I should have received a copy of it.  
[8] Q. I see. You are listed as a cc at the bottom of the page, correct?  
[9] A. Yes. That's what I just referred to.  
[10] Q. The last full sentence on this first page says: "We can discuss how best to summarize this year's MTBE survey results for the upcoming emerging product quality issues meeting with Bob Rich."  
[11] Do you see that?  
[12] A. Yes, I see that.  
[13] Q. Who was Bob Rich at the time?  
[14] A. He was one of the upper-level managers in Exxon Company
- [1] on average in New York, correct?  
[2] A. I can only tell you what this says. I don't have any independent recollection of this.  
[3] Q. OK. All right. Well, we won't touch on all of the states. In fact, I think we will move on.  
[4] Sir, do you have any recollection that by 1998, Exxon was aware of substantial MTBE contamination in states around the country; groundwater contamination I am talking about?  
[5] A. It depends on your definition of "substantial." We were aware that there had been numerous places that MTBE had been spilled and detected.  
[6] Q. Let's go to Tab 4. This is PL5562. It is in evidence. This is called "Emerging Product Quality Issues Meeting, May 12, 1998."  
[7] You are one of the attendees, am I right?  
[8] A. Yes, that's what it says.  
[9] Q. And, Liz, if you could blow up the 12:30 to 1:10. It says: "Title: MTBE issues. Legislative/regulatory developments."  
[10] And the discussion here is TRE. That's you, correct?  
[11] A. That would be me, yes.  
[12] Q. Do you remember giving this presentation?  
[13] A. No, I don't.  
[14] Q. Let me direct you to -- who generally were the attendees of the Emerging Product Quality Issues meeting? Was this a

- [1] U.S.A. I can't specify his particular title at this point in time.  
[2] Q. Sir, can you recall whether there was any MTBE site surveys for any years earlier than 1998, as reflected in this document?  
[3] A. I couldn't say, sitting here today.  
[4] Q. This is the first, isn't it?  
[5] A. No, I couldn't say it was the first. I don't know whether it was the first or not.  
[6] Q. If you look -- let me direct your attention to the page with the Bates number ending in 18.  
[7] And, Liz, if you could blow up from the top of the page to that highlighted portion. Thank you. It is a little tough to read.  
[8] This is the "1998 MTBE Survey by State and Engineer." It says it is dated Thursday, April 23, 1998. And this is for New York State.  
[9] The second question asks: "Approximately how many sites have been tested?" And the answer is "98."  
[10] The third question is: "What concentrations do you find?" It says 50,000 to 100,000 parts per billion.  
[11] And the fourth question is: "What concentration ranges do you find high end?" "Upper end" is the answer of 1 million parts per billion has been seen in monitor wells."  
[12] So in 1998, out of 98 sites tested, Exxon was finding concentrations ranging from 50,000 to 100,000 parts per billion

- [1] management-level meeting?  
[2] A. It wasn't a high-level management meeting. This was a group that met, I don't remember, maybe it was quarterly or twice a year, or something like that, to talk about any issues having to deal with product quality.  
[3] Q. OK. I'm sorry, go head.  
[4] A. I was going to say, I mean, there were a lot of developments. We were looking at reducing the sulfur in gasoline, we were looking at reducing the sulfur in diesel. So there were a whole lot of developments that were coming, not just oxygenates associated with that.  
[5] Q. And yet the first session at the meeting had to do with MTBE, correct?  
[6] A. Yes, that's what it says.  
[7] Q. If we go to the second page of the document. Liz, if you could highlight the first bullet under "California." Actually, just that first sentence.  
[8] "Concerns continue over MTBE contamination of surface/groundwater, much media interest."  
[9] By 1998, Exxon was aware of concerns in California over MTBE contamination of surface and groundwater, correct?  
[10] A. Yes.  
[11] Q. OK. Let's go down to the next bullet, please, and highlight the first sentence and, actually, highlight the highlighted area.

[1] "WSPA has taken the lead in addressing California  
[2] industry issues."

[3] What is WSPA?

[4] A. It is an industry organization -- it is an organization of  
[5] the oil and gas industry. It is the Western States Petroleum  
[6] Association.

[7] Q. And Exxon is a member of WSPA?

[8] A. I believe we are.

[9] Q. It says here that "WSPA has taken the lead in addressing  
[10] California industry issues. Supports legislative studies  
[11] underway. Opposes a ban unless studies based on sound science  
[12] suggest otherwise."

[13] Do you see that?

[14] A. Yes.

[15] Q. Exxon in 1998 opposed the ban of MTBE, didn't it?

[16] A. I'm trying to recall. It is a long time ago. I suspect we  
[17] probably opposed a ban at that point in time.

[18] Q. Did Exxon ever support a ban of MTBE?

[19] A. I don't recall.

[20] Q. It didn't, did it?

[21] A. Well, I don't recall that we ever supported a ban.

[22] Q. Let's go down to the next highlighted paragraph and enlarge  
[23] that whole thing.

[24] It says -- now, this is a report that you gave to the  
[25] group, correct?

[1] Q. Exxon, however, opposed a ban of MTBE at this time, right?

[2] A. Again, I don't recall if we opposed the ban or kept silent  
[3] at this point in time.

[4] Q. The last bullet: "Mobil publicly supporting WSPA position  
[5] but internally concerned about MTBE."

[6] That's what you reported to Exxon, correct?

[7] A. That's what it says here.

[8] Q. Go to the next page.

[9] Under "MTBE Release Incidents," go ahead and enlarge  
[10] that whole thing.

[11] First listed is Santa Monica. "MTBE leaks in two well  
[12] fields have impacted over 70 percent of municipal water supply,  
[13] Mobil, Shell, and Chevron making initial payments of \$7 million  
[14] for water replacement and remediation."

[15] So that's what you were reporting to this management  
[16] group in 1998?

[17] A. That's what is on the page.

[18] Q. And you go on then to report incidents also in North  
[19] Carolina, Philadelphia and Kansas, am I right?

[20] A. Yes. Yes, there are four incidents listed here.

[21] Q. OK. Let's go to the next page.

[22] This is still part of your presentation, isn't it?  
[23] Let's enlarge the first part.

[24] This is still part of your presentation?

[25] A. It would appear to be, yes.

[1] A. It appears to be, yes.

[2] Q. Yes. "WSPA consensus position overlays some divergent  
[3] views. Tosco wrote to CARB" --

[4] That's the California Air Resources Board, correct?

[5] A. Yes.

[6]

[7] Q. -- "October 1997 requesting 'decisive action immediately'  
[8] to begin moving away from MTBE, continues to make similar  
[9] public statements. Recently announced six-month pilot use of  
[10] ethanol in SF Bay area."

[11] And you were reporting to Exxon that Tosco at least  
[12] was supporting aggressive action to move away from MTBE,  
[13] correct?

[14] A. That's what this says.

[15] Q. And this was in 1998, correct?

[16] A. Yes, that's the date on the front page.

[17] Q. The next bullet says: "Chevron (December 1997) publicly  
[18] acknowledged 'legitimate environmental concern about MTBE,'  
[19] asked California regulators to 'explore options for reducing or  
[20] eliminating MTBE altogether.'"

[21] Do you see that?

[22] A. Yes, I see that.

[23] Q. You were reporting that that's what Chevron had asked for  
[24] the previous December, correct?

[25] A. That's what this says.

[1] Q. API, that's the American Petroleum Institute, correct?

[2] A. Yes.

[3] Q. You reported "Downstream committee" --

[4] Remind the jury of what the downstream committee is.

[5] A. That's a group in API that is primarily composed of  
[6] refiners.

[7] Q. "The downstream committee supports WSPA's MTBE position,  
[8] currently taking low profile to avoid provoking opposition."

[9] That is what you reported then?

[10] A. That's what it says.

[11] Q. Now, Exxon, if we go down the page -- just enlarge that  
[12] last bullet.

[13] You reported that "Exxon was initial scoping of  
[14] scenarios for eliminating MTBE from Baton Rouge and Baytown  
[15] refineries completed."

[16] So in 1998, Exxon had completed an exit strategy from  
[17] MTBE for those two refineries, correct?

[18] A. I would state that somewhat differently. I mean, this says  
[19] initial scoping scenarios and this is for the manufacturer.

[20] One of the things that became clear is when we studied  
[21] the removal of MTBE was that we couldn't do it in most areas  
[22] unless the rest of the industry changed as well, because we did  
[23] not have the proprietary distribution system to make a  
[24] unilateral decision on oxygenate.

[25] Q. You were doing an initial scoping of scenarios to eliminate

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<p>[1] A. Yes, I am.</p> <p>[2] Q. And that in fact those stations were not undertaking the same upgrade and investigations measures that you just described that Exxon was taking?</p> <p>[3] A. I can't say what they were or were not.</p> <p>[4] Q. Let's go to Tab 7, please. This is PL3136.</p> <p>[5] This is an e-mail from Buford Lewis to several addressees. And you are cc'ed on it, correct?</p> <p>[6] A. Yes, that is what is shown here.</p> <p>[7] Q. And this is dated -- I just had it -- May 19, 2000. Am I right?</p> <p>[8] <b>THE COURT:</b> It is on the screen. It is easy to see the date.</p> <p>[9] <b>THE WITNESS:</b> I'm sorry. I was looking for the date and I didn't see it. Thank you.</p> <p>[10] A. Yes. That's the date on it, yes.</p> <p>[11] Q. The second sentence says: "We are very interested in the preferred options for us as we pull MTBE."</p> <p>[12] Do you see that?</p> <p>[13] A. Yes, I see that.</p> <p>[14] Q. Now, you would be pulling -- "you" being Exxon would be pulling MTBE in response to anticipated bans, correct?</p> <p>[15] A. That would be my guess. I have to -- I would have to take a look at this to make sure I put it in context.</p> <p>[16] Q. Let's go to the next tab, please. This is PL3999.</p>	<p>[1] effective year end 2002."</p> <p>[2] That's what you wrote to him, correct?</p> <p>[3] A. Yes, that's what it says.</p> <p>[4] Q. In fact, the ban in California was extended to 2003, correct?</p> <p>[5] A. It was delayed one year out of fear of supply issues.</p> <p>[6] Q. So as of 2000, despite knowing that MTBE was being banned because of groundwater contamination in states around the country, MTBE had no plan -- I'm sorry, Exxon had no plan voluntarily to move away from it, correct?</p> <p>[7] A. This says we had no plans at that time to move away. I couldn't necessarily agree with the first part that you predicated that question with.</p> <p>[8] Q. That is, about there being bans around the country?</p> <p>[9] A. No, about what was driving the bans. There may have been other drivers for the bans as well.</p> <p>[10] Q. There were other drivers to the bans --</p> <p>[11] A. I said there may have been.</p> <p>[12] Q. Besides groundwater contamination?</p> <p>[13] You are speculating, right, sir?</p> <p>[14] A. No. I'm saying I can't personally agree with the first statement that you made from my own knowledge.</p> <p>[15] Q. OK. Let's go to -- give me just a second here.</p> <p>[16] (Pause)</p> <p>[17] let's go to the next tab, which is Tab 9. And I hope</p>
<p style="text-align: center;">Page 5656</p> <p>[1] This is a memo from Buford Lewis again to Brian Harney, and you are cc'ed on it with others, correct?</p> <p>[2] A. Yes, that is what is shown.</p> <p>[3] Q. In 2000, Exxon had already merged with Mobil to form ExxonMobil, correct?</p> <p>[4] A. Yes, this is after the merger.</p> <p>[5] Q. So these are internal ExxonMobil e-mails, correct?</p> <p>[6] A. Yes.</p> <p>[7] Q. Now, the second e-mail in the chain is from you to Mr. Harney. "Subject: Byproduct ethers."</p> <p>[8] And the first two sentences read: "At this point" -- so that would be in December 2000, correct?</p> <p>[9] A. Yes.</p> <p>[10] Q. In fact, December 14, 2000?</p> <p>[11] A. Well, no, I'm sorry. I'm trying to look at the -- the date on my original memo, can you lower that? OK. Yes, that date is December 14th of 2000. I'm sorry, there is another memo in the book under that tab that was confusing me.</p> <p>[12] Q. This is Tab 8 --</p> <p>[13] A. I'll ignore the book and pay attention to the screen.</p> <p>[14] Q. I'm sorry if we have a mispagination. I apologize.</p> <p>[15] Anyway, you wrote: "At this point, Americas Refining has no plans to voluntarily eliminate MTBE or other ethers from domestic gasoline production. Rather, elimination is expected to be driven by legal requirements, such as California's ban</p>	<p style="text-align: center;">Page 5658</p> <p>[1] I have the right document there for you. It should be "USGC MTBE Phase Out Assessment." Is that what you have?</p> <p>[2] A. Yes.</p> <p>[3] Q. And this is PL631.</p> <p>[4] <b>MR. SHER:</b> It is in evidence, your Honor.</p> <p>[5] Q. Referring to the second page, the very first line says: "MTBE removal from mogas would be costly for XOM."</p> <p>[6] "Mogas" is motor gasoline, correct?</p> <p>[7] A. Yes, that's a shorthand term we use.</p> <p>[8] Q. And "XOM" is ExxonMobil.</p> <p>[9] A. Yes.</p> <p>[10] Q. So this document is saying that MTBE removal from gasoline would be costly to ExxonMobil?</p> <p>[11] A. Yes.</p> <p>[12] Q. And the next line says: It would have an impact -- removing MTBE from motor gasoline would have an impact of around 50 to \$100 million a year, correct?</p> <p>[13] <b>MR. BONGIORNO:</b> Your Honor, that is not what the document says. He can read it, I agree. But he is paraphrasing, arguing; I'm not sure.</p> <p>[14] <b>MR. SHER:</b> No, it says --</p> <p>[15] <b>THE COURT:</b> Stick to the text.</p> <p>[16] <b>MR. SHER:</b> Sure.</p> <p>[17] Q. "Total USGC margin impact three refineries estimated at 50 to \$100 million per year primarily due to octane loss,"</p>